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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,839	10/11/2001	Andrew Egendorf	7178-207 <i>121054.00(5)</i>	4483
27383	7590	06/04/2004	EXAMINER	
CLIFFORD CHANCE US LLP 31 WEST 52ND STREET NEW YORK, NY 10019-6131			FELTEN, DANIEL S	
			ART UNIT	PAPER NUMBER
			3624	

DATE MAILED: 06/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/975,839	Applicant(s) EGENDORF, ANDREW	
	Examiner Daniel S Felten	Art Unit 3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-101 and 166-228 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-101 and 166-228 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Receipt of the amendment filed March 01, 2004 is acknowledged.

Response to Amendment

2. Applicant has appointed an attorney or agent to conduct all business before the Patent and Trademark Office. Double correspondence/communication with an applicant and applicant's attorney or agent will not be undertaken. Accordingly, applicant is required to conduct all future correspondence/communication with this Office through the attorney or agent of record. See 37 CFR 1.33.

Response to Arguments

3. Applicant's arguments filed March 01, 2004 have been fully considered but they are not persuasive. The applicant has asserted that all the currently presented independent claims require that the buyer initiate the authorization to charge the purchase price to the buyer. The rejection is maintained from the previous Office Action dated January 14 with further clarification to address this issue below.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 31-101 and 166-228 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraser et al (US 5,329,589) in view of Clearwater (US 5,394,324).

Fraser is a third party payment system for wherein communication systems are used to mediate transactions preferably via telephones and, "...**data networks** in which a network node can initiate a sessions and video networks in which *there are interactions between the network and the user.*" (see Fraser et al., col. 5, ll. 57-60). Fraser fails to disclose that the buyer and seller communicate over the **Internet**, however, the use of data networks in Fraser suggests that it would have been obvious for an artisan of ordinary skill at the time of the invention to modify Fraser with an Internet network because an artisan at the time of the invention would have been motivated to seek the latest technology of communication systems so as to improve the mediation of different types of transactions involving a large number of entities (buyers and sellers) reachable by via a communication system. Thus to modify Fraser to use the notoriously old and well known Internet would have provided an obvious alternative to the telephone network and other cited data networks disclosed by Fraser, being an obvious expedient to one of ordinary skill in the art.

Claims 31, 32, 4, 45, 166, 167, 172, 173, 178, 184, 185, 190, 191, 196, 197, 202, 203 and 215-228, et al, require that the customer initiate authorization to charge. Fraser discloses in one embodiment that the credit card payment has the vendor, not the buyer, providing the transaction amount to the third party (see Fraser, fig. 4, col. 8, ll. 53-55). However, in another embodiment, Fraser also suggests an auction where

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customers can make bids (see Fraser, col. 14, ll. 14-28). Clearwater discloses an auction-based control system where the buyer pays an amount of money via credit or debit (see Clearwater, col. 7, ll. 35-46). it would be obvious to one of ordinary skill in the art to recognize that the amount for a particular bid must come from the bidder, as well as the authorize the amount to be debited and/or bidden. It therefore would have been obvious to integrate the aforementioned feature of Clearwater into Fraser whereby customers could make bids using real money. Thus such a modification would be considered an obvious expedient to one of ordinary skill in the art.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S Felten whose telephone number is (703) 305-0724. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DSF
May 27, 2004

Daniel S Felten
Examiner
Art Unit 3624



HANI M. KAZIMI
PRIMARY EXAMINER